REVISED DISCUSSION FOR ISSUE PAPER

Lemon Law Returns and Deductibles Paid Under Warranty Contracts

Regulation 1655, Returns, Defects and Replacements

I. Issue

Should Regulation 1655, *Returns, Defects and Replacements*, be amended to include language concerning: 1) the application of tax to deductibles paid by customers on warranty contracts, and 2) the refund of sales tax on motor vehicles falling under the Lemon Law provisions[1] of the Civil Code?

II. Staff Recommendation

Staff recommends that Regulation 1655 be amended as proposed.

III. Other Alternative(s) Considered

Make no changes to Regulation 1655.

IV. Background

The proposed amendments to Regulation 1655 are staff-initiated and are designed to provide regulatory authority for guidelines on:

- The application of tax to customer-paid deductibles on optional and mandatory warranty contracts.
- The refund of sales tax when a vehicle is found to be defective under the Lemon Law provisions of the Civil Code.

For several years, staff has dealt with these issues using administrative guidelines. The proposed amendments incorporate these guidelines into the regulation.

An initial discussion paper on these issues was mailed to interested parties on March 27, 2000, along with proposed amendments to the Regulation. A meeting on these issues was subsequently held on April 3, 2000. No interested parties were in attendance. In discussions with the staff who attended, it was agreed that the basic guidelines on warranty contracts and Lemon Law provisions detailed in the discussion paper were a reasonable interpretation of the relevant statutes. However, staff felt that the proposed amendments to Regulation 1655 required some modification. As a result, the amendments were revised as shown in Exhibit 1.

The proposed amendments are scheduled for discussion by the Business Taxes Committee on July 25, 2000.

[1] The pertinent provisions of what is commonly referred to as the "Lemon Law" are found in Civil Code Sections 1793.2, 1793.22, 1793.23, 1793.24, and 1793.25.

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V. Discussion

Discussion of Warranty Contracts

The purpose of the proposed amendment to Regulation 1655 concerning warranty contracts is to include an explanation of the application of tax to deductible payments made in connection with repairs performed under a warranty contract. Repairs for which a customer pays a deductible are not covered by the warranty contract, which is why the customer must pay the deductible. While the current regulation explains the application of tax to the furnishing of parts under the warranty contract, it does not explain the application of tax to deductible charges paid by the customer.

Under the current regulation, the application of tax to the use of parts under warranty contracts depends on whether the contract is mandatory or optional. The charge for a mandatory warranty contract is subject to tax along with the item sold. Parts that the warrantor furnishes to fulfill its obligations under that mandatory contract are considered as included in the original sale of the item for which the warranty is provided, and the warrantor may purchase those parts for resale. The charges for an optional warranty are not subject to tax. The warrantor is the consumer of any parts it furnishes to fulfill its obligations under that optional warranty contract, and tax applies either to the sale of the parts to the warrantor or to its purchase price of those parts.

The current language of Regulation 1655 does not address the issue of how tax applies to deductible payments. Under the Sales and Use Tax Law, the deductible payment generally is consideration for the transfer of parts, that is, tangible personal property. When such is the case, there is a taxable retail sale to the customer.

The staff provided guidelines on the application of tax to deductible payments in the June 1994 and June 1996, *Tax Information Bulletin*. The June 1994 article, *Application of Tax to Deductibles on Automobile Warranty Contracts*, provides an overview of the application of tax to the use of parts on warranty contracts and the proper method for reporting tax when a customer pays a deductible on a mandatory warranty. The June 1996 article, *Correction: Application of Tax to Deductibles on Optional Automobile Warranty Contracts*, provides the same overview and the proper method for reporting tax when a customer pays a deductible on an optional warranty contract. To assist taxpayers in reporting correctly, the proposed amendment generally incorporates these guidelines into Regulation 1655.

Although both articles are written from the perspective of automobile manufacturers, the guidelines apply to any mandatory or optional warranties whether provided by the manufacturer, dealer, or separate warranty company. Generally, a third-party performs the repairs (the repairer), bills the warrantor for the repairs covered by the warranty, and collects the amount of any deductible from the customer. For example, an appliance manufacturer provides a warranty without a deductible with the sale of a stove and a repair is made by a third-party repairer. The repairer bills the manufacturer for the repairs, which includes a charge for parts and a charge for labor. If the warranty is mandatory, the repairer's sale of the parts to the manufacturer is a sale

for resale because the cost of warranty parts is included in the sale price of the stove. If the warranty is optional, the repairer's sale of the parts to the manufacturer is subject to tax because the manufacturer is the consumer of the parts. In both cases, the repairer is the seller of the parts, not the manufacturer.

If, in the example above, the warranty required the payment of a deductible, the repairer would still be making a sale of parts. However, to the extent that the payment of the deductible is a payment for parts, the repairer's sale of parts is to the customer. This portion of the repairer's sale of parts is not covered by the warranty. Thus, regardless of whether the warranty is mandatory or optional, the sale of the parts to the customer for the payment of the deductible is a taxable retail sale.

The June 1994 article provided guidelines for determining the measure of tax for deductibles paid on mandatory warranty contracts. It noted that there is no tax consequence when the repairs were entirely labor, meaning that the deductible is also only for labor. On the other hand, if the entire charge for the repair is for parts, then the entire deductible is also for parts, and the entire deductible would be subject to tax. However, the most common situation is where the repairs include both parts and labor. In such cases, the deductible pays a prorated portion of the parts and labor. Accordingly, a portion of the deductible is for the purchase of parts, and tax applies to that amount of the deductible. For example, a customer is required to pay a $50 deductible on a warranty repair. The total charge for the repair work is $200: $75 for parts and $125 for labor. The measure of tax on the deductible is computed as follows: $75 ÷ $200 = 37.5%. The deductible is multiplied by 37.5% to determine the taxable portion of the deductible ($18.75). The remaining charge for the parts, $56.25, is not taxable because the repairer sold it to the warrantor for resale as discussed above. Whether tax reimbursement is paid to the repairer by the customer or manufacturer depends on the terms of the warranty contract.

The June 1996 article covers the same points as the June 1994 article. In addition, it provides guidelines for applying deductibles to optional warranty contracts. As noted above, the sale of a part to a warrantor of an optional warranty is generally subject to tax. If the repair is entirely labor such that the deductible is not taxable or if the warranty contract provides that the warrantor will pay all tax reimbursement due, the repairer need not prorate the deductible between a charge for parts and a charge for labor. However, if the warrantor does not agree to pay the amount of tax reimbursement due in connection with the deductible portion of the repairs, then the repairer must prorate the deductible to determine the proper amount of tax reimbursement to collect from the warrantor and from the customer. Using the example in the preceding paragraph: 37.5% of the total charge of $200 is subject to tax. Since the customer paid $50 for the deductible, $18.75 of the deductible, ($50 x 37.5%), is subject to tax. The repairer would then collect tax reimbursement from the warrantor measured by the portion of the charge for parts paid by the warrantor, $56.25 ($150 x 37.5%).

To assist taxpayers in correctly reporting tax on warranty contract deductibles, a new subdivision is proposed for Regulation 1655. This subdivision, 1655(c)(4), explains the application of tax to

deductible payments. It provides an example of how to properly prorate such payments to report the correct amount of tax. It also adds a provision not included in the *Tax Information Bulletin* articles, namely, the person providing the warranty contract is liable for any tax or tax reimbursement that would otherwise be payable by the customer as the result of a deductible payment unless the warranty contract provides that the customer is liable for that tax or tax reimbursement.

Discussion of Lemon Law Provisions

Under the California Lemon Law, a vehicle manufacturer must either provide a replacement vehicle or restitution to the buyer of a defective new vehicle if the vehicle cannot be serviced or repaired to conform to the applicable express warranty. It is the buyer's choice as to whether to take a replacement or restitution.

Although a manufacturer providing restitution was required to include the amount of sales tax paid by the buyer in the restitution, there was no mechanism for a refund of that sales tax prior to the adoption of Civil Code section 1793.25, operative January, 1988. Prior to the adoption of this provision, a refund of sales tax could not be granted to the manufacturer since the manufacturer was not the person making the retail sale of the vehicle and paying sales tax to the Board. However, since the adoption of Civil Code section 1793.25 and amendment to Revenue and Taxation Code (RTC) section 7102, a manufacturer who includes sales tax in restitution to the buyer under specific criteria set forth in the Lemon Law is entitled to a refund of that amount. To ensure that manufacturers are properly refunded, the staff has developed administrative guidelines that explain when a manufacturer may claim a refund of tax.

There are also tax implications when a manufacturer replaces a vehicle rather than paying restitution. In conjunction with the guidelines on restitution, staff has developed guidelines for reporting the tax consequences of vehicle replacements. To ensure that manufacturers and dealers understand how to report Lemon Law transactions correctly, the proposed amendment incorporates both guidelines into Regulation 1655.

The primary issue in the application of sales and use tax to transactions occurring under the California Lemon Law concerns refunds of tax included in restitution paid by automobile manufacturers to vehicle buyers. There is also a secondary issue concerning net tax or refund due when a replacement vehicle has a different cost than the defective vehicle. Since there are specific criteria that a manufacturer must meet to be eligible for refunds or to be liable for only the net tax amount under the Lemon Law, this section provides an overview of the Lemon Law provisions before discussing the tax implications of restitution or replacement.

The pertinent provisions of the California Lemon Law are contained in sections 1793.2, 1793.22, 1793.23, 1793.24, and 1793.25 of the California Civil Code (Exhibit 3). Section 1793.2 provides generally that manufacturers must maintain service and repair facilities and, if unable to repair the item under warranty, must replace the item or reimburse the customer for its cost.

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Subdivision 1793.2(d)(2) applies specifically to motor vehicles. It states that a buyer has the option of either replacement or restitution and the manufacturer cannot require the buyer to accept a replacement. In the case of a replacement, the manufacturer must provide a substantially identical new vehicle, provide the standard warranties, and pay any sales or use tax, license, registration or other fees, plus incidental damages. In the case of restitution, the manufacturer must pay an amount equal to the price paid, including charges for transportation, manufacturer options, and collateral charges such as sales tax, license, registration or other fees, plus incidental damages. In both cases, the manufacturer may reduce the value of the restitution or replacement by an amount attributable to the use made by the buyer prior to the first service for the defect. This amount is calculated as: miles traveled prior to service ÷ 120,000 miles x the price of the vehicle.

Section 1793.22 is the Tanner Consumer Protection Act. It provides guidelines for designating a vehicle as a "lemon." The section sets the presumption that a reasonable number of attempts have been made to bring the new vehicle into conformity with the applicable express warranties if, within 18 months from delivery to the buyer or 18,000 miles, whichever comes first, four or more repair attempts have been made to repair the same nonconformity, or it the vehicle has been out of service for a cumulative total of more than 30 calendar days by reason of repairs of the nonconformity since delivery to the buyer. The section also requires the buyer to participate in any available qualified third-party dispute resolution process, as defined, prior to asserting the presumption discussed above. A defective motor vehicle cannot be transferred to another party unless the defect is disclosed and corrected and the manufacturer warrants that it has been free of the defect for one year.

Section 1793.23 provides that manufacturers give notice that a vehicle returned under the Lemon Law is or has been defective. The vehicle must be retitled in the name of the manufacturer and the ownership certificate inscribed with the notation "Lemon Law Buyback" and a decal affixed to the vehicle with the same notation. In addition, any person who acquires the vehicle for resale must notify potential buyers that the vehicle was a Lemon Law buyback.

Section 1793.24 specifies the information that must be in the notice required by section 1793.23 and its format.

Section 1793.25 provides that the Board shall reimburse a manufacturer for any sales tax paid on a replacement or refunded to a buyer through restitution. The manufacturer must provide proof that the dealer who sold the vehicle reported sales tax to the Board. The manufacturer must also provide satisfactory proof that it complied with the notification and labeling requirements of section 1793.23. That is, the title for the defective vehicle has been branded "Lemon Law Buyback" and the decal required by Vehicle Code section 11713.12 has been affixed in accordance with that section's requirements. To obtain a reimbursement, the manufacturer must file a claim for refund with the Board as provided in RTC section 6901and following sections.

Staff established guidelines for Lemon Law transactions in Operations Memo (OM) 907,

Reimbursement of Sales Tax Refunded Under the "Lemon Law (Exhibit 2). OM 907 requires any vehicles on which manufacturers claim refunds be properly treated as defective vehicles under the above Civil Code provisions. In addition, OM 907 requires that any vehicle replacements on which a refund or net liability are due be properly documented as Lemon Law transactions.

The criteria for claiming a tax refund for restitution are detailed in OM 907, section V, Claims for Refund. Manufacturers who file a claim for "reimbursement" with the Board must state that the refund of tax was made to the customer in accordance with Civil Code Section 1793.2. The manufacturer must also explain how the refund was calculated using odometer readings and settlement agreements, and include proof that the tax was paid by the dealer who sold the vehicle. A statement from the dealer that sales tax was paid is adequate proof. Finally, the manufacturer must provide sufficient documentation to prove that the restitution was made under the provisions of the Lemon Law. This documentation must include:

- A copy of the original sales agreement,
- A copy of the replacement vehicle sales agreement (if applicable),
- Documentation supporting that a reasonable number of attempts have been made to repair the vehicle,
- A statement from the buyer verifying they were given the choice of restitution versus vehicle replacement (if applicable),
- Copy of documents to support the amount refunded to the buyer and/or any financing entity holding title (e.g. check(s) issued),
- The sales tax permit number of the original retailer,
- Copies of arbitration documents (if applicable),
- A copy of the branded title of the reacquired vehicle,
- Copies of refund computation worksheets, and
- A copy of the repair history to support mileage amount when the vehicle was first reported for the nonconformity.

If the manufacturer fails to document that a vehicle was returned as a result of the Lemon Law, the claim will be denied, since a manufacturer has no standing as a claimant unless the vehicle was designated as defective under the Lemon Law. Under the Sales and Use Tax Law, only the retailer of a vehicle may claim a deduction for merchandise claimed as defective.

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OM 907 provides guidelines for tax or refunds due on replacements in subsection VI, Dealer Participation in Replacement. Typically, a buyer who requests a replacement vehicle under the Lemon Law will deal directly with a dealer, not the manufacturer. In recognition of this fact, the guidelines allow manufacturers to designate dealers as their agents to repair or replace vehicles. Dealers who make restitution or replace a vehicle without participation of the manufacturer are not subject to the Lemon Law and must report sales or returns under the returned or defective merchandise provisions of Regulation 1655.

Staff has found that manufacturers and dealers use two different methods when handling Lemon Law replacements. One method is to treat the transaction as a replacement under the mandatory warranty. The tax consequences will vary depending on the selling price of the replacement. If the selling price of the replacement vehicle and defective vehicle is the same, there are no tax consequences. A replacement vehicle that has a selling price that is more than the defective vehicle will result in a tax liability for the dealer. A replacement vehicle that has a selling price that is less than the defective vehicle will result in a refund of tax to the customer. Under the guidelines, the manufacturer may file a claim for refund only for the amount of tax refunded to the customer.

The alternate method is to treat the sale of the replacement vehicle as a separate and distinct transaction from the sale of the original. With this method, the selling price of the replacement vehicle is fully taxable and the manufacturer provides the customer a credit as an offset. The credit is noted on the sales contract and the manufacturer files a claim for a refund of taxes included in the credit. The dealer must treat the transaction as a separate sale to the buyer, apply sales tax to the full selling price of the replacement vehicle, and remit the full amount of tax to the Board.

To provide dealers and manufacturers with regulatory guidelines for reporting Lemon Law transactions, a new subdivision, 1655(b)(2), is proposed for Regulation 1655. The current paragraph under subdivision (b) will be renumbered as subdivision (b)(1). The new subdivision incorporates the guidelines detailed above. That is, a manufacturer who claims a refund for a defective vehicle must document that the vehicle is within the criteria of the Lemon Law provisions in the Civil Code. However, the proposed amendment does not require the manufacturer to document the number of attempts made to repair the vehicle. That requirement relates to whether a presumption arises as to whether a reasonable number of attempts to repair the nonconformity have been made. A manufacturer may provide a replacement or restitution under the Lemon Law if the vehicle has a qualifying nonconformity regardless of the number of attempts made to repair it, if any. Accordingly, the manufacturer must provide only a copy of the branded title and proof that a decal was affixed to the vehicle noting that the vehicle was a Lemon Law buyback. In addition, the manufacturer must provide the original dealer's permit number and documentation that the dealer reported the tax on the original sale. Finally, the manufacturer must document the amount of tax included in any restitution.

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Regulation 1655, Returns, Defects and Replacements

VI. Summary

The inclusion of new subdivisions in Regulation 1655 providing interpretations of the Sales and Use Tax Law for deductible payments on warranty contracts and Lemon Law vehicles will clarify the application of tax to these transactions. Because these guidelines are already being used by staff and have been published through articles in the *Tax Information Bulletin* and special notices to vehicle dealers and manufacturers, the proposed amendments require no operative date and no special administrative actions.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 5/12/2000

1655 RDP - 2nd draft.doc

dhl: 5/11/00

Regulation 1655. Returns, Defects and Replacements.

References: Sections 6006-6012, Revenue and Taxation Code; Sections 1793.2-1793.25, Civil Code; Section 11713.12, Vehicle Code..
Barter, Exchange, Trade-Ins, see Regulation 1654.
Auction Sales, agreement not to deliver property or to return amount paid, see Regulation 1565.

(a) RETURNED MERCHANDISE. The amount upon which tax is computed does not include the amount charged for merchandise returned by customers if, (1) the full sale price, including that portion designated as "sales tax", is refunded either in cash or credit and (2) the customer, in order to obtain the refund or credit, is not required to purchase other property at a price greater than the amount charged for the property that is returned. Refund or credit of the entire amount is deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking may not exceed the actual cost of rehandling and restocking the returned merchandise. However, in lieu of using the actual cost for each transaction, the amount withheld for rehandling and restocking may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle (generally one year). If the seller elects to withhold rehandling and restocking amounts based on a percentage of sales price, the seller is bound by that election for the entire accounting cycle for which the election is made and must apply that percentage in lieu of actual cost during that period on all returned merchandise transactions for which rehandling and restocking costs are withheld. The amount withheld as rehandling and restocking costs may not include compensation for increased overhead costs because of the return, for refinishing or restoring the property to salable condition where the necessity therefor is occasioned by customer usage, or for any expense prior to the "sale" (i.e., transfer of title, lease, or possession under a conditional sale contract).

Sellers must maintain adequate records which may be verified by audit, documenting the percentage used.

(b) DEFECTIVE MERCHANDISE.

(1) IN GENERAL. Amounts credited or refunded by sellers to consumers on account of defects in merchandise sold may be excluded from the amount on which tax is computed. If, however, defective merchandise is accepted as part payment for other merchandise and an additional allowance or credit is given on account of its defective condition, only the amount allowed or credited on account of defects may be excluded from taxable gross receipts. The amount allowed as the "trade-in" value must be included in the measure of tax.

(2) RESTITUTION OR REPLACMENT UNDER CALIFORNIA LEMON LAW.

(A) General. Under subdivision (d) of Civil Code section 1793.2, if a manufacturer is unable to service or repair a “new motor vehicle,” as that term is defined in subdivision (e)(2) of Civil

Code section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either replace the motor vehicle or provide the buyer restitution of the purchase price, less specified amounts, at the buyer's election.

(B) Restitution. A manufacturer who pays a buyer restitution pursuant to, and in complete compliance with, subdivision (d)(2) of Civil Code section 1793.2 is entitled to a refund of the amount of sales tax or sales tax reimbursement included in the restitution paid by the manufacturer to the buyer. The manufacturer may file a claim for refund of that amount with the board. The claim must include a statement that the claim is submitted in accordance with the provisions of section 1793.25 of the Civil Code. The manufacturer must submit with the claim documents evidencing that restitution was made pursuant to, and in complete compliance with, subdivision (d)(2) of Civil Code section 1793.2, including a copy of the original sales agreement between the buyer and the dealer of the non-conforming motor vehicle, copies of documents showing all deductions made in calculating the amount of restitution paid to the buyer along with full explanations for those deductions, a copy of the title branded "Lemon Law Buyback" for the non-conforming motor vehicle returned by the buyer, and proof that the decal the manufacturer is required to affix to that motor vehicle has been so affixed in accordance with section 11713.12 of the Vehicle Code. The manufacturer must also submit with the claim the seller's permit number of the dealer who made the retail sale of the non-conforming motor vehicle to the buyer, and evidence that the dealer had reported and paid sales tax on the gross receipts from that sale. The number of attempts made to repair the non-conforming motor vehicle, if any, prior to providing the customer restitution is not relevant for purposes of this regulation.

(C) Replacement. For purposes of this regulation, a manufacturer who, pursuant to subdivision (d)(2) of Civil Code section 1793.2, replaces a non-conforming motor vehicle with a new motor vehicle substantially identical to the motor vehicle replaced is replacing the motor vehicle under the terms of the mandatory warranty. No additional tax is due unless the buyer is required to pay an additional amount to receive the replacement motor vehicle, in which case tax is due measured by the amount of that payment. If an amount is refunded to the customer as part of the exchange of the non-conforming motor vehicle for the replacement motor vehicle, then that amount is regarded as restitution for purposes of this regulation and the manufacturer is entitled to a refund, and may file a claim for refund under subdivision (b)(2)(B) of this regulation, of the amount of sales tax or sales tax reimbursement that is included in the amount of the refund, which must be measured by the difference between the taxable sales price paid by the buyer to the dealer for the non-conforming motor vehicle and the sales price of the replacement motor vehicle credited against the sales price of the non-conforming motor vehicle in calculating the amount of the refund. The number of attempts made to repair the motor vehicle, if any, prior to providing the customer a replacement motor vehicle is not relevant for purposes of this regulation.

(c) REPLACEMENT PARTS--WARRANTIES.

(1) IN GENERAL--DEFINITIONS. "Mandatory Warranty." A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. "Optional Warranty." A warranty

is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller, i.e., he is free to contract with anyone he chooses.

(2) MANDATORY WARRANTIES. The sale of tangible personal property includes the furnishing, pursuant to the guaranty provisions of the contract of sale, or mandatory warranty, of replacement parts or materials, and if the property subject to the warranty is sold at retail, the measure of the tax includes any amount charged for the guaranty or warranty, whether or not separately stated. The sale of the replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable.

(3) OPTIONAL WARRANTIES. The person obligated under an optional warranty contract to furnish parts, materials, and labor necessary to maintain the property is the consumer of the materials and parts furnished and tax applies to the sale of such items to him. If he purchased the property for resale, without tax paid on the purchase price, he must report and pay tax upon the cost of such property to him when he appropriates it to the fulfillment of the contract of warranty.

(4) DEDUCTIBLES. A deductible paid by a customer under the terms of a mandatory or optional warranty contract is subject to tax measured by the amount of the deductible allocable to the sale of tangible personal property to the customer. For example, if the itemized sales price of tangible personal property (or the fair retail value if not separately itemized) provided pursuant to a warranty is 50 percent of the total fair retail value of the repairs and the deductible is $100, 50 percent of that deductible, $50, would be allocable to the sale of tangible personal property and would be subject to tax, whether the warranty were optional or mandatory. Unless otherwise stated in the warranty contract, when either an optional or a mandatory warranty provides that the customer will pay a deductible towards repairs and services provided under the warranty, the person providing the warranty contract is liable for any tax or tax reimbursement otherwise payable by the customer with respect to that deductible.

State Board of Equalization

OPERATIONS MEMO
FOR PUBLIC RELEASE

No: 907
Date: January 8, 1988
Revised: December 20, 1988
Revised: November 7, 1989
Revised: July 30, 1999

SUBJECT: Reimbursement of Sales Tax Refunded Under the "Lemon Law"

I. GENERAL

Effective January 1, 1988, Sections 1793.2, and 1794 were amended and Section 1793.25 was added to the Civil Code requiring the Board to reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making monetary restitution or vehicle replacement to the buyer of the defective vehicle. These sections jointly are commonly known as the California "Lemon Law". Revenue and Taxation Code Section 7102 was amended to allow refunds pursuant to Civil Code Section 1793.25. In 1992, Civil Code Section 1793.22 was added to include consumer protection provisions related to defective vehicles.

II. BACKGROUND

The Lemon Law, which became effective January 1, 1983, provides an arbitration process for disputes between manufacturers and consumers of new motor vehicles purported to have major manufacturing defects. If the mediator rules in favor of the consumer, the manufacturer is required by law either to replace the motor vehicle or reimburse the consumer for the purchase price. The manufacturer may reduce the purchase price by an amount attributable to the value of the use made before the defect was discovered.

Prior to January 1, 1988, sales tax refunds paid by manufacturers as restitution to purchasers of defective vehicles were not reimbursable by the Board because refunds or replacements made under the arbitration process did not qualify as credits for returned merchandise.

III. GENERAL PROVISIONS

For purposes of the Lemon Law, the term "manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch. “New motor vehicle" means a new passenger or commercial motor vehicle which is bought primarily for personal, family or household purposes. Effective January 1, 1993, the term “New motor vehicle” includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation. The term does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. Dealer owned vehicles, demonstrators, and other motor vehicles sold with a manufacturer’s new car warranty are included under the Lemon Law.

Beginning in January 1, 1988, the Board has been authorized to reimburse manufacturers and distributors of new motor vehicles for the sales tax which they include in refunds to buyers pursuant to Section 1793.2 of the Civil Code. This section also provides that should a manufacturer be unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle or promptly make restitution to the buyer. The buyer shall be free to elect restitution in lieu of a replacement vehicle, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle. Arbitration is not required before the Board is authorized to make a refund as long as the specified requirements in the Civil Code are satisfied. This interpretation is a broadening of that provided in the original industry notice, which implied that an arbitrator's judgment was required.

When the buyer chooses to have a vehicle replaced, the new vehicle is considered a replacement under warranty. If the sales price of the replacement vehicle is less than the credit received for the original vehicle, the customer must be refunded the difference, including applicable sales tax.

When the buyer chooses restitution, the manufacturer must pay an amount equal to the actual price paid or payable by the buyer, including any sales tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled. The manufacturer may deduct for usage of the defective vehicle and any amount charged for non-manufacturer items installed by the dealer. These amounts must be deducted from the original vehicle selling price before calculating the sales tax refund.

The buyer is liable for use of the defective vehicle prior to the time the buyer first delivers the vehicle to the manufacturer, or to its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount attributable to use by the buyer will be calculated by multiplying the total sales price of

the motor vehicle by a fraction having as its denominator 120,000 and as its numerator the number of miles the vehicle was used by the buyer up to the first nonconformity.

IV. DOCUMENTATION OF VEHICLES RETURNED UNDER THE LEMON LAW

Civil Code Section 1793.25 was amended to require the Board to reimburse the manufacturer for an amount equal to the sales tax which the manufacturer pays to or for the buyer when providing a replacement vehicle under the Lemon Law. In addition, Civil Code Sections 1793.23 and 1793.24 were added to expand consumer protection related to subsequent sales of vehicles reacquired by manufacturers, dealers, or lienholders under the provisions of the Lemon Law.

Section 1793.23 provides that prior to any sale, lease, or transfer of a vehicle reacquired under the Lemon Law the manufacturer shall:

1. Cause the vehicle to be retitled in the name of the manufacturer,
2. request the Department of Motor Vehicles to inscribe the ownership certificate with the notation “Lemon Law Buyback”, and
3. affix a decal to the vehicle identifying it as a “Lemon Law Buyback”.

In addition, Section 1793.23 provides that any manufacturer or dealer who sells a vehicle which ownership certificate is inscribed with the notation “Lemon Law Buyback” shall, prior to sale, provide the transferee with a disclosure statement signed by the transferee which states:

> “This vehicle was repurchased by its manufacturer due to a defect in the vehicle pursuant to consumer warranty laws. The title to this vehicle has been permanently branded with the notation ‘LEMON LAW BUYBACK’.”

V. CLAIMS FOR REFUND

Manufacturers may file a claim for "reimbursement" with the Board if restitution for the vehicle (including sales tax) is paid on or after January 1, 1988. Such restitution is considered made under the amended Lemon Law, which authorizes the Board to reimburse the manufacturer for the tax. Manufacturers wishing to refund the sales tax to their customers under this law, are not entitled to reimbursement from the Board where restitution for the vehicle was originally made prior to January 1, 1988.

All claims should be forwarded to the Headquarters’ Refund Section for processing and must include a statement that the refund to the customer was made in accordance with Civil Code Section 1793.2. The claim must include an explanation of how the refund was calculated, including settlement agreements and odometer statements, along with proof that the retailer of the motor vehicle (for which the manufacturer is making restitution) reported and paid sales tax on that vehicle. A statement from the selling

dealer that sales tax was reported on the original sale of the vehicle will be accepted as adequate proof.

In addition to the above documentation, the following documents should be provided in support of the claim:

1. A copy of the original sales agreement,
2. A copy of the replacement vehicle sales agreement (if applicable),
3. Documentation supporting that a reasonable number of attempts have been made to repair the vehicle,
4. A statement from the buyer verifying they were given the choice of restitution versus vehicle replacement (if applicable),
5. Copy of documents to support the amount refunded to the buyer and/or any financing entity holding title (e.g. check(s) issued),
6. The sales tax permit number of the original retailer,
7. Copies of arbitration documents (if applicable),
8. A copy of the branded title of the reacquired vehicle,
9. Copies of refund computation worksheets, and
10. A copy of the repair history to support mileage amount when the vehicle was first reported for the nonconformity.

VI. DEALER PARTICIPATION IN REPLACEMENT

Typically, an automobile manufacturer sells its new motor vehicles to a dealership which, in turn, resells the vehicle to retail buyers. The automobile manufacturer may designate a dealership to act as its agent to repair or replace vehicles under the manufacturer's warranties applicable to the vehicles sold. A dealership may, in turn, designate another dealership to repair or replace vehicles under the manufacturer's warranty. Dealers may become involved in one or both of the approaches listed below.

A. Mandatory Warranty Provisions

When a buyer chooses vehicle replacement, the new vehicle is considered to be a replacement under a mandatory warranty, and the tax liability of the participating dealer is measured by the sales price in excess of the credit received. If the sales price of the replacement vehicle is less than the original vehicle, the customer must be refunded the difference including applicable sales tax. If the sales price of the replacement vehicle and the original vehicle are the same, there is no tax adjustment. Finally, if the sales price of the replacement vehicle is greater than the original vehicle, the dealership would owe tax on the difference in sales price between the original vehicle and the replacement vehicle. License, registration and other non-taxable fees included in the credit given for the original vehicle are not to be deducted from the price of the new vehicle when calculating the amount subject to tax.

Thus, when dealerships adhere to these provisions, the manufacturers would only be allowed to file claims for refund when the sales price of a replacement vehicle is less than the original vehicle and the customer has been refunded the difference, including applicable sales tax.

B. Alternative Method

Notwithstanding the above mandatory warranty provisions, a number of vehicle dealers currently treat replacement transactions as separate and distinct from the original transaction. Thus, the full selling price of the replacement vehicle is treated as taxable. Under these circumstances, manufacturers typically provide a credit to the buyer toward the purchase of the replacement vehicle from a dealership. The credit is most often noted directly on the sales contract of the replacement vehicle. Manufacturers are allowed to file claims for refund of sales tax included in the credit allowed for the original vehicle on the replacement transaction. Under this approach, a replacement vehicle furnished by the dealership will be considered by the Board to be a separate sale to the buyer and sales tax will be applicable to the full selling price of that vehicle. The dealership must report and remit the full sales tax applicable to the Board at the time that the replacement vehicle is furnished.

Vehicle dealers involved in the above situations should retain documentation on file supporting these transactions. The same documentation that is required to support a claim for refund filed by the manufacturer should be retained in the dealer's records in support of these transactions. This would include documentation received from the manufacturer instructing the dealer to replace the vehicle in accordance with Section 1793.2 of the California Civil Code and calculation of the amount of credit allowed.

If the dealership makes restitution to the buyer or replaces a vehicle without the participation of the manufacturer, the transaction is not subject to California's Lemon Law and is controlled by applicable provisions of California's Sales and Use Tax Law (e.g. Regulation 1655).

VII. REFUND SECTION RESPONSIBILITIES

The Refund Section is responsible for handling claims for refund filed by vehicle manufacturers pursuant to Civil Code Section 1793.25. Civil Code Sections 1793.2, 1793.22 and 1793.25 are used to evaluate the claim for refund for proper handling by the manufacturer. The resulting refund or letter of denial is sent directly to the manufacturer.

Prior to implementation of the Integrated Revenue Information System (IRIS), each claim was assigned a claim number based on the sellers permit of the original selling dealer. This facilitated tracking claims, avoidance of duplication, and deallocation of funding. Information on the disposition of claims filed by manufacturers was entered under the Business Taxes Consolidated Inquiry System (BTCIS) Petition/Refund (PR) screen by customer name under the sellers permit of the original selling dealer. Since the implementation of IRIS, claims are tracked under arbitrary account numbers issued

to the vehicle manufacturers. As of January 1999, the following arbitrary numbers have been issued to process refunds under the Lemon Law:

SR OHA 52-007581	Pontiac/GMC Division
SR OHA 52-007582	Ford Motor Company
SR OHA 52-007583	Subaru of America, Inc.
SR OHA 52-007584	Chevrolet Motor Division
SR OHA 52-007585	Volkswagen of America, Inc.
SR EAA 52-007586	Kia Motors America, Inc.
SR OHA 52-007587	Buick Motor Division
SR OHA 52-007588	Oldsmobile Division
SR OHA 52-008275	Mitsubishi Motor Sales of America, Inc.
SR OHA 52-008286	Saturn Corp

VIII. DISTRICT RESPONSIBILITIES

In cases where refunds have been issued to vehicle manufacturers, to ensure that a duplicate credit (deduction) is not taken by dealerships, districts are advised to view the appropriate Appeals Subsystem screen(s) for the vehicle dealership under audit, and/or the related account(s) above, prior to completing field investigations. Prior to IRIS implementation, the BTCIS PR 2 screen under the sellers permit of the vehicle dealer included the following information:

1) Customer name.
2) Period in which the vehicle was originally purchased.
3) Amount of tax refunded to the manufacturer or a zero if the claim was denied.

For all claims received in Headquarters after implementation of IRIS Phase II, the Appeals Subsystem will include the vehicle identification number (VIN) in addition to the information listed above. This detail can be found under the Appeals Case Maintenance screens (APL PR and APL MH). Upon entering the APL MH screen, function key F20 can be used to view the VIN. Function key F11 (if available) provides access to the customer name. Please note that there are some cases where data converted from the A15 does not include all of the above detail regarding Lemon Law refunds issued.

Field Examinations

In audits of dealerships it will be the field auditor's responsibility to verify that transactions in which the dealer participated qualify under the Lemon Law. During an audit investigation, district staff may become involved in any of the situations listed below.

A. Vehicle Replacements

1. Manufacturer warranty provisions - Manufacturers are allowed, through their dealerships to offset the sales tax due on a replacement vehicle with the tax that had been remitted on the original vehicle sale. Accordingly, during the course of an audit, district staff should verify that tax was properly reported on the original sale. No further tax will be due on the transaction unless the sales price of the replacement vehicle exceeds the sales price of the original vehicle. In such case, district staff should verify that tax is properly reported on the net difference in value.

In instances where the sales price of the replacement vehicle is less than the sales price of the original vehicle, manufacturers may file a claim for refund for sales tax measured by the net difference in the sales price of the two vehicles provided this difference and the tax was refunded to the buyer. The dealership should not reflect these types of transactions on their sales and use tax returns.

If the Appeals Subsystem (APL MH) screen indicates that a claim for refund was filed and or granted to the manufacturer on any of the above types of transactions, district staff are asked to immediately forward all pertinent documentation related to these transactions directly to the Headquarters Refund Section for investigation. This is to ensure that no duplicate refunds are issued.

2. Alternative Replacement Method – When manufacturers, through their dealers, treat vehicle replacements as separate and distinct transactions from the sale of the original vehicle, district staff should verify that tax was reported on the full selling price of both the original vehicle and the replacement transaction. Under these circumstance manufacturers may file claims for refund with the Board for sales tax included in the credit provided to the buyer on the replacement vehicle. No subsequent deduction is allowable on the dealer's sales and use tax returns for this transaction.

B. Restitution

A vehicle dealer may not claim a deduction for transactions when vehicle manufacturers provide customers with full restitution. The manufacturer will file a claim for refund directly with the Headquarters' Refund Section. Accordingly, any such deduction claimed by dealers on their sales and use tax returns should be disallowed.

If during the course of an audit of a motor vehicle dealer the auditor discovers evidence that the transaction was not handled by the manufacturer in accordance with the Lemon Law, an informational memo (BT-1164 or 1032) should be prepared for inclusion in the manufacturer's file and a copy should be forwarded to the Headquarters' Refund Section.

IX. NOTICES MAILED

A special notice was mailed in January 1988, to all identified motor vehicle manufacturers and distributors explaining the provisions of Assembly Bill 2057 which affect the Sales and Use Tax Law (Attachment 1). This law contains other provisions not related to the Sales and Use Tax Law. Inquiries related to other provisions of this law should be referred to the California State Bureau of Automotive Repair.

A second special notice to motor vehicle manufacturers and distributors (Attachment 2) with updated information was mailed concurrent with distribution of the November 1989 revision of this OP Memo. Additionally, a notice was sent to all new vehicle dealers (Attachment 3) explaining their responsibilities when they participate in the replacement of a vehicle at the direction of a manufacturer.

A third special notice to motor vehicle manufacturers and distributors (Attachment 4) with updated information will be mailed concurrent with distribution of this OP Memo.

X. LIMITATION OF APPLICATION

These Civil Code provisions in no way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption in this state, of tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

XI. OBSOLESCENCE

This operations memo will become obsolete after its provisions are incorporated into the appropriate manuals, pamphlets, and the Business Taxes Law Guide.

J. E. Speed
Deputy Director
Sales and Use Tax Department

Distribution l-D

Civil code sections 1793.05, 1793.2, 1793.22, 1793.23, 1793.24, 1793.25, 1793.26

1793.05. Vehicle manufacturers who alter new vehicles into housecats shall, in addition to any new product warranty, assume any warranty responsibility of the original vehicle manufacturer for any and all components of the finished product which are, by virtue of any act of the alterer, no longer covered by the warranty issued by the original vehicle manufacturer.

1793.1. (a) (1) Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth such warranties in simple and readily understood language, which shall clearly identify the party making such express warranties, and which shall conform to the federal standards for disclosure of warranty terms and conditions set forth in the federal Magnuson-Moss Warranty Federal Trade Commission Improvement Act, and in the regulations of the Federal Trade Commission adopted pursuant to the provisions of that act.

(2) Every work order or repair invoice for warranty repairs or service shall clearly and conspicuously incorporate in 10-pointboldface type the following statement either on the face of such workorder or repair invoice, or on the reverse side thereof, or on an attachment to the work order or repair invoice: A buyer of this product in California has the right to have this product serviced or repaired during the warranty period. The warranty period will be extended for the number of whole days that the product has been out of the buyer's hands for warranty repairs. If a defect exists within the warranty period, the warranty will not expire until the defect has been fixed. The warranty period will also be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return this product for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. This time extension does not affect the protections or remedies the buyer has under other laws. If the required notice is placed on the reverse side of the workorder or repair invoice, the face of the work order or repair invoice shall include the following notice in 10-point boldface type:

Notice to Consumer: Please read important information on back. A copy of the work order or repair invoice and any attachment thereto shall be presented to the buyer at the time that warranty service or repairs are made.

(b) Every manufacturer, distributor, or retailer making express warranties and who elects to maintain service and repair facilities within this state pursuant to the provisions of this chapter shall:

(1) At the time of sale, provide the buyer with the name and address of each such service and repair facility within this state; or

(2) At the time of the sale, provide the buyer with the name and address and telephone number of a service and repair facility central directory within this state, or the toll-free telephone number of a service and repair facility central directory outside this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

(3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of such warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name,

address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable.

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) (A) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of those warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of the warranties.

(B) As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work. However, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, shall not preclude a good faith discount which is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph shall not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30days. Delay caused by conditions beyond the control of the manufacturer or his representatives shall serve to extend this 30-dayrequirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair

facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall beat the manufacturer's expense.

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794,including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph(B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair

facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

1793.22. (a) This section shall be known and may be cited as the Tanner Consumer Protection Act.

(b) It shall be presumed that a reasonable number of attempts have been made to conform a new motor vehicle to the applicable express warranties if, within 18 months from delivery to the buyer or 18,000miles on the odometer of the vehicle, whichever occurs first, either (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents and the buyer has at least once directly notified the manufacturer of the need for the repair of the nonconformity or (2) the vehicle is out of service by reason of repair of nonconformities by the manufacturer or its agents for accumulative total of more than 30 calendar days since delivery of the vehicle to the buyer. The 30-day limit shall be extended only if repairs cannot be performed due to conditions beyond the control of the manufacturer or its agents. The buyer shall be required to directly notify the manufacturer pursuant to paragraph (1) only if the manufacturer has clearly and conspicuously disclosed to the buyer, with the warranty or the owner's manual, the provisions of this section and that of subdivision (d) of Section 1793.2, including the requirement that the buyer must notify the manufacturer directly pursuant to paragraph (1). This presumption shall be a rebuttable presumption affecting the burden of proof, and it may be asserted by the buyer in any civil action, including an action in small claims court, or other formal or informal proceeding.

(c) If a qualified third-party dispute resolution process exists, and the buyer receives timely notification in writing of the availability of that qualified third-party dispute resolution process with a description of its operation and effect, the presumption in subdivision (b) may not be asserted by the buyer until after the buyer has initially resorted to the qualified third-party dispute resolution process as required in subdivision (d). Notification of the availability of the qualified third-party dispute resolution process is not timely if the buyer suffers any prejudice resulting from any delay in giving the notification. If a qualified third-party dispute resolution process does not exist, or if the buyer is dissatisfied with that third-party decision, or if the manufacturer or its agent neglects to promptly fulfill the terms of the qualified third-party dispute resolution process decision after the decision is accepted by the buyer, the buyer may assert the presumption provided in subdivision (b) in an action to enforce the buyer's rights under subdivision (d) of Section 1793.2. The findings and decision of a qualified third-party dispute resolution process shall be admissible in evidence in the action without further foundation. Any period of limitation of actions under any federal or California laws with respect to any person shall be extended for a period equal to the number of days between the date a complaint is filed with a third-party dispute resolution process and the date of its decision or the date before which the manufacturer or its agent is required by the decision to fulfill its terms if the decision is accepted by the buyer, whichever occurs later.

(d) A qualified third-party dispute resolution process shall be one that does all of the following:

(1) Complies with the minimum requirements of the Federal Trade Commission for informal dispute settlement procedures as set forth in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987.

(2) Renders decisions which are binding on the manufacturer if the buyer elects to accept the decision.

(3) Prescribes a reasonable time, not to exceed 30 days after the decision is accepted by the buyer, within which the manufacturer or its agent must fulfill the terms of its decisions.

(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987,Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1,1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate in the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794,or of attorneys' fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(8) Requires that no arbitrator deciding a dispute may be a party to the dispute and that no other person, including an employee, agent, or dealer for the manufacturer, may be allowed to participate substantively in the merits of any dispute with the arbitrator unless the buyer is allowed to participate also. Nothing in this subdivision prohibits any member of an arbitration board from deciding a dispute.

(9) Obtains and maintains certification by the Department of Consumer Affairs pursuant to Chapter 9 (commencing with Section 472) of Division 1 of the Business and Professions Code.

(e) For the purposes of subdivision (d) of Section 1793.2 and this section, the following terms have the following meanings:

(1) "Nonconformity" means a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.

(2) "New motor vehicle" means a new motor vehicle that is used or bought for use primarily for personal, family, or household purposes. "New motor vehicle" also means a new motor vehicle that is bought or used for business and personal, family, or household purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal

entity, to which not more than five motor vehicles are registered in this state. "New motor vehicle" includes the chassis, chassis cab, and that portion of a motor home devoted to its propulsion, but does not include any portion designed, used, or maintained primarily for human habitation, a dealer-owned vehicle and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty but does not include a motorcycle or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. A demonstrator is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(3) "Motor home" means a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity. (2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.1793.23. (a) The Legislature finds and declares all of the following:

(1) That the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers.

(2) That, in states without this valuable warranty protection, used and irrepairable motor vehicles are being resold in the marketplace without notice to the subsequent purchaser.

(3) That other states have addressed this problem by requiring notices on the title of these vehicles or other notice procedures to warn consumers that the motor vehicles were repurchased by a dealer or manufacturer because the vehicle could not be repaired in a reasonable length of time or a reasonable number of repair attempts or the dealer or manufacturer was not willing to repair the vehicle.

(4) That these notices serve the interests of consumers who have aright to information relevant to their buying decisions.

(5) That the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of "lemons" to this state for sale to the drivers of this state.

(b) This section and Section 1793.24 shall be known, and may be cited as, the Automotive Consumer Notification Act.

(c) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, any other state, or a federally administered district shall, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant

to paragraph (2) of subdivision (d) of Section 1793.2, cause the vehicle to be retitled in the name of the manufacturer, request the Department of Motor Vehicles to inscribe the ownership certificate with the notation "Lemon Law Buyback," and affix a decal to the vehicle in accordance with Section 11713.12 of the Vehicle Code if the manufacturer knew or should have known that the vehicle is required by law to be replaced, accepted for restitution due to the failure of the manufacturer to conform the vehicle to applicable warranties pursuant to paragraph (2) of subdivision (d) of Section1793.2, or accepted for restitution by the manufacturer due to the failure of the manufacturer to conform the vehicle to warranties required by any other applicable law of the state, any other state, or federal law.

(d) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle in response to a request by the buyer or lessee that the vehicle be either replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer of the vehicle, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.

(e) Any person, including any dealer, who acquires a motor vehicle for resale and knows or should have known that the vehicle was reacquired by the vehicle's manufacturer in response to a request by the last retail owner or lessee of the vehicle that it be replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.

(f) Any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle when the vehicle's ownership certificate is inscribed with the notation "Lemon Law Buyback" shall, prior to the sale, lease, or ownership transfer of the vehicle, provide the transferee with a disclosure statement signed by the transferee that states:

"THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK'."

(g) The disclosure requirements in subdivisions (d), (e), and (f) are cumulative with all other consumer notice requirements and do not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of subdivision (f) of Section 1793.22.

(h) For purposes of this section, "dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of, a used motor vehicle or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers.

1793.24. (a) The notice required in subdivisions (d) and (e) of Section 1793.23 shall be prepared by the manufacturer of the reacquired vehicle and shall disclose all of the following:

(1) Year, make, model, and vehicle identification number of the vehicle.

(2) Whether the title to the vehicle has been inscribed with the notation "Lemon Law Buyback."

(3) The nature of each nonconformity reported by the original buyer or lessee of the vehicle.

(4) Repairs, if any, made to the vehicle in an attempt to correct each nonconformity reported by the original buyer or lessee.

(b) The notice shall be on a form 81/2 x 11 inches in size and printed in no smaller than 10-point black type on a white background. The form shall only contain the following information prior to it being filled out by the manufacturer:

WARRANTY BUYBACK NOTICE
(Check One)
/__/ This vehicle was repurchased by the vehicle's manufacturer after the last retail owner or lessee requested its repurchase due to the problem(s) listed below.
/__/ THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION "LEMON LAW BUYBACK." Under California law, the manufacturer must warrant to you, for a one year period, that the vehicle is free of the problem(s) listed below.

V.I.N.	Year	Make	Model

Problem(s) Reported by Original Owner	Repairs Made, if any, to Correct Reported Problem(s)

Signature of Manufacturer Date

_____ _____

Signature of Dealer(s) Date

_____ _____

_____ _____

_____ _____

Signature of Retailer Buyer or Lessee Date

_____ _____

_____ _____

(c) The manufacturer shall provide an executed copy of the notice to the manufacturer's transferee. Each transferee, including a dealer, to whom the motor vehicle is transferred prior to its sale to a retail buyer or lessee shall be provided an executed copy of the notice by the previous transferor.

1793.25. (a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer pays to or for the buyer when providing a replacement vehicle pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section1793.2 or includes in making restitution to the buyer pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section1793.2, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle and the manufacturer provides satisfactory proof that it has complied with subdivision (c) of Section 1793.23.The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

(b) Nothing in this section shall in any way change the application of the sales and use tax to the gross receipts and the sales price from the sale, and the storage, use, or other consumption, in this state or tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(c) The manufacturer's claim for reimbursement and the board's approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections 6902.1,6903, 6907, and 6908 thereof, insofar as those provisions are not inconsistent with this section.

1793.26. (a) Any automobile manufacturer, importer, or distributor who reacquires, or who assists a dealer or lienholder in reacquiring, a motor vehicle, whether by judgment, decree, arbitration award, settlement agreement, or voluntary agreement, is prohibited from doing either of the following:
(1) Requiring, as a condition of the reacquisition of the motor vehicle, that a buyer or lessee who is a resident of this state agree not to disclose the problems with the vehicle experienced by the buyer or lessee or the nonfinancial terms of the reacquisition.

(2) Including, in any release or other agreement, whether prepared by the manufacturer, importer, distributor, dealer, or lienholder, for signature by the buyer or lessee, a confidentiality clause, gag clause, or similar clause prohibiting the buyer or lessee from disclosing information to anyone about the problems with the vehicle, or the nonfinancial terms of the reacquisition of the vehicle by the manufacturer, importer, distributor, dealer, or lienholder.

(b) Any confidentiality clause, gag clause, or similar clause in such a release or other agreement in violation of this section shall be null and void as against the public policy of this state.

(c) Nothing in this section is intended to prevent any confidentiality clause, gag clause, or similar clause regarding the financial terms of the reacquisition of the vehicle.